

REMARKS

Applicants have studied the Office Action dated June 11, 2009, and have made amendments to the claims. Claims 1-37 were previously canceled without prejudice. Claims 38 and 42 are amended. No new matter has been added. It is submitted that the application is in condition for allowance. Reconsideration is respectfully requested.

Rejections under 35 U.S.C. § 103

Claims 38-45 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0004924 to Kim et al. (hereinafter "Kim") in view of U.S. Patent Application Publication No. 2003/0014709 to Miyoshi et al. (hereinafter "Miyoshi") in view of and U.S. Patent No. 5,507,035 to Bantz et al. (hereinafter "Bantz"). This rejection is respectfully traversed.

As admitted by the Examiner in the present Office Action, Kim does not disclose allocating blocks and dummy bits to a plurality of antennas based on received channel status information, as recited in independent claims 38 and 42. However, the Examiner applies the teaching of Miyoshi to cure the deficiencies of Kim. The Examiner further admits that the Kim and Miyoshi combined does not disclose allocating data blocks to an antenna having good channel status and allocating dummy bits to an antenna having bad channel status, as recited in claims 38 and 42. However, the Examiner applies the teaching of Bantz to cure the deficiencies of Kim and Miyoshi.

Applicants respectfully assert that Miyoshi does not qualify as a 102(e)/103(a) prior art reference with respect to the present application. Applicants note to the Examiner that the present application claims the benefit and right of priority to Korean Application No. P2002-74226 filed on November 27, 2002. Therefore, the earliest effective filing date of the present application is November 27, 2002, which is before the publication date of Miyoshi. Thus, Miyoshi must qualify under 35 U.S.C. 102(e) to be cited against the present application.

However, Applicants point out that MPEP 2136.03 provides that if a potential reference (Miyoshi) results from, or claims the benefit of, an international application (PCT/JP01/11448), then the international filing date is the U.S. filing date for prior art

purposes only if the international application: 1) was filed on or after November 29, 2000; 2) designated the United States; and 3) was published in English.

Applicants assert that PCT/JP01/11448 was not published in English. Enclosed with this paper for the Examiner's reference is WO 02/054659, the international publication of PCT/JP01/11448. As shown in the WO reference, the international application was published in Japanese. Accordingly, Miyoshi does not qualify as a § 102(e) prior art reference because the December 26, 2001 filing date of PCT/JP01/11448 could not be used as the § 102(e) date for prior art purposes because PCT/JP01/11448 was not published in English.

Applicants also recognize that Miyoshi claims the benefit of Japanese Patent Application No. 2000-398398 filed on December 27, 2000. However, as provided by MPEP 2136.03, the Japanese priority application's filing date cannot be used as the § 102(e) date for prior art purposes.

In view of the above, it is respectfully submitted that Miyoshi is disqualified as a prior art reference to reject any claims of the present application under § 102(e)/103(a). Accordingly, it is submitted that independent claims 38 and 42, and the claims respectively dependent thereon, are allowable over the combination of Kim, Miyoshi and Bantz.

Alternatively, it is respectfully asserted that Miyoshi fails to disclose "wherein each of the at least two second data blocks is allocated to an antenna having good channel status and only the dummy bits are allocated to an antenna having bad channel status," as recited in amended claims 38 and 42.

As indicated by the Examiner in the Office Action, Miyoshi discloses providing bit segments for a packet (blocks), wherein assigning them allows the systematic bits and parity bits to be placed in different symbols, i.e., all symbols are constructed of only systematic bits or a combination of systematic bits and dummy bits or only parity bits or a combination of parity bits and dummy bits. Thus, although Miyoshi teaches a symbol constructed of dummy bits combined with other types of bits (systematic, parity), Miyoshi does not disclose that the symbol is constructed of dummy bits only. In

contrast, amended claims 38 and 42 recite that "only the dummy bits are allocated to an antenna having bad channel status."

Furthermore, it is respectfully asserted that Bantz fails to cure the deficiencies of Miyoshi. Column 2, lines 29-45 and column 3, lines 10-22 of Bantz relate to a preferred antenna selection strategy based on received channel data quality. However, it is submitted that Bantz fails to disclose "allocating each of the at least two second data blocks and dummy bits to the plurality of antennas based on the received channel status information, wherein each of the at least two second data blocks is allocated to an antenna having good channel status and only the dummy bits are allocated to an antenna having bad channel status," as recited in claims 38 and 42.

In view of the forgoing, it is respectfully submitted that independent claims 38 and 42, and the claims respectively dependent thereon, are allowable over the combination of Kim, Miyoshi and Bantz.

CONCLUSION

In light of the above remarks, Applicants submit that the present Amendment places all claims of the present application in condition for allowance. Reconsideration of the application, as amended, is requested.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein; and no amendment made was for the purpose of narrowing the scope of any claim, unless Applicants have argued herein that such amendment was made to distinguish over a particular reference or combination of references.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California, telephone number (213) 623-2221 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

Lee, Hong, Degerman, Kang & Waimey

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By: /Harry S. Lee/ 
Harry S. Lee
Registration No. 56,814

Customer No. 035884

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